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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte MARTIN H. GRAHAM

Appeal 2009-008494
Application 09/221,291
Technology Center 2600

Before MAHSHID D. SAADAT, MARC S. HOFF,
and CARLA M. KRIVAK, *Administrative Patent Judges*.

SAADAT, *Administrative Patent Judge*.

DECISION ON APPEAL¹

¹ The two month time period for filing an appeal or commencing a civil action, as recited in 37 C.F.R. § 1.304 or for filing a request for rehearing as recited in 37 C.F.R. § 41.52, begins to run from the “MAIL DATE” (paper delivery mode) or the “NOTIFICATION DATE” (electronic delivery mode) shown on the PTOL-90A cover letter attached to this decision.

STATEMENT OF THE CASE

Appellant appeals under 35 U.S.C. § 134 from the rejection of claims 19-25. No other claims are pending. (App Br. 2.) We have jurisdiction under 35 U.S.C. § 6(b).

We reverse.

Exemplary Claim

Independent claim 19, which is illustrative of the invention, reads as follows:

19. A method for encoding data bits for transmission comprising:

(a) generating a first biphasic pulse having a first portion of a first polarity followed by a second portion of a second polarity;

(b) waiting a first period of time following the second portion of the first biphasic pulse during which period of time no amplitude dependent data bits are encoding, the duration of the first period of time being selected to represent a first plurality of data bits;

(c) generating a second biphasic pulse following the period of time, the second biphasic pulse having a third portion of the second polarity followed by a fourth portion of the first polarity;

(d) waiting a second period of time following the fourth portion of the second biphasic pulse during which period of time no amplitude dependent data bits are encoding, the duration of the second period of time being selected to represent a second plurality of data bits;

(e) repeating steps (a) and (b) with a third period of time representing a third plurality of data bits; and

(f) repeating steps (c) and (d) with a fourth period of time representing a fourth plurality of data bits.

Appellant's Contentions

Appellant contends that the Examiner erred in rejecting independent claim 19 under 35 U.S.C. § 103(a) as being unpatentable over the

combination of Fullerton (US 5,677,927), Omura (US 5,157,686), and Devon (US 5,692,127) because:

No matter how you consider this sequence [the encoding of the data sequence 0110101] or where you place it, it does not teach alternating the polarity of biphasic pulses as present in the applicant's invention.

(App. Br. 6.)

With respect to Devon, Appellant further contends that encoding data is based on when a pulse occurs in a frame, whereas the claimed invention uses the time between pulses to encode data. (App. Br. 8.)

Issue on Appeal

Did the Examiner err in rejecting claim 19 as being obvious because the references fail to teach or suggest generating first and second biphasic pulses having first-fourth portions and encoding data bits based on the duration of the time following a second portion of the first biphasic pulse and a fourth portion of the second biphasic pulse?

PRINCIPLES OF LAW

Burden on Appeal

The allocation of burdens requires that the USPTO produce the factual basis for its rejection of an application under 35 U.S.C. §§ 102 and 103. *In re Piasecki*, 745 F.2d 1468, 1472 (Fed. Cir. 1984) (citing *In re Warner*, 379 F.2d 1011, 1016 (CCPA 1967)). The one who bears the initial burden of presenting a prima facie case of unpatentability is the Examiner. *In re Oetiker*, 977 F.2d 1443, 1445 (Fed. Cir. 1992).

ANALYSIS

Appellant presents arguments as to why the Examiner has erred. (App. Br. 5-11). We agree with Appellant's contentions above.

Appellant specifically argues that the Examiner's characterization (Ans. 9-11) of the claimed waiting first and second periods as encompassing periods of zero seconds is in error because it reduces the claimed limitation to nothing (Reply Br. 4). We agree with Appellant that, in reading the claimed first and second periods on a non-existent period of zero seconds, the Examiner effectively ignores the recited limitation. With respect to Devon, we also agree with Appellant's contention (App. Br. 8) that using the time between pulses to encode data is not taught by the reference, which is concerned with the position of the pulse within the pulse position modulation (PPM) frame (*see* Devon at col. 5, ll. 48-65).

Therefore, Appellant has established that the Examiner erred with respect to the rejection of claims 19-25 under § 103(a).

CONCLUSIONS

(1) The references fail to teach or suggest generating first and second biphasic pulses having first-fourth portions and encoding data bits based on the duration of the time following a second portion of the first biphasic pulse and a fourth portion of the second biphasic pulse.

(2) The Examiner erred in rejecting independent claim 19, as well as claims 20-25 dependent thereon, as being unpatentable under 35 U.S.C. § 103(a).

ORDER

The Examiner's decision to reject claims 19-25 is reversed.

REVERSED

gvw

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